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maturity for a valuable consideration extended the time of payment of the note. *Held*, that under the Negotiable Instruments statute (§§ 3171-3178g Rev. St.) the rule of the common law, as to the discharge of the surety by extending the time of payment, has been in effect abrogated and plaintiff may recover. *Richards v. Market Exchange Bank Co.* (1910), — Oh. St. —, 90 N. E. 1000.

Very few cases have arisen under the Negotiable Instruments Law involving the precise point decided in the principal case. Before the adoption of the first statute as a general rule mere extension of time did not discharge the surety, but "extension of time with payment of a valuable consideration" did. The following cases, in support of the case under discussion, hold the statute has changed the common law rule. *Vanderford v. Farmers & Mechanics Nat. Bank*, 105 Md. 164, 66 Atl. 47, 10 L. R. A. (N.S.) 129; *Cellers v. Meachem*, 49 Ore. 186, 89 Pac. 426, 10 L. R. A. (N.S.) 133; *Nat. Citizens Bank v. Toplitz*, 81 App. Div. 593, 81 N. Y. Supp. 422. The latter case was affirmed by the Court of Appeals, 178 N. Y. 464, 71 N. E. 1, but the decision was placed on another ground, the higher court refusing to pass upon the question announced by the lower court, and intimating in its opinion the common law rule was still in effect. "To have the effect of discharging the surety, however, it has always been the rule that such an agreement must be upon a valid consideration and must be sufficient to preclude the creditor during the extended period from enforcing the debt." *Powers v. Silberstein*, 108 N. Y. 169; *Olmstead v. Latimer*, 158 N. Y. 313; *Nat. Citizens Bank v. Toplitz*, *supra*. *Deahy v. Choquet*, 28 R. I. 338, 67 Atl. 421, while not exactly in point, seems to announce a doctrine contrary to that of the case under discussion. For a discussion of the first two cases deciding the same questions involved in the principal case, see 5 MICH. L. REV. 683.

STATUTE OF LIMITATIONS—PERSONS WHO MAY RELY ON LIMITATION.—The plaintiff gas company obtained a preliminary injunction restraining the enforcement of a statute reducing the price of gas. The plaintiff charged the old price, depositing in court the difference between the new and the old rate, which sum was to be disposed of in accordance with the result of litigation testing the constitutionality of the statute. The statute having been found valid, the sum paid into court, excepting about \$18,000 unclaimed, was properly distributed among the consumers. Upon motion it was ordered (HOLT, J., dissenting), that the unclaimed money be paid over to the gas company upon its giving a bond conditioned to repay the consumers within six years and that it should not be permitted to plead the statute of limitations to any of the claims to the above fund. *Northern Union Gas Co. v. Mayer, Atty. Gen., et al.* (1909), — C. C. A., 2nd Cir. —, 174 Fed. 817.

The equitable doctrine of laches and the statute of limitations have by their similarity formed a basis for confusion as to the relation of the equity court to that statute affecting legal actions. The above case presents a novel aspect of that relation, and for which the writer's searches have found no precedent. To a clearer view of the question involved, it should be noted that the gas consumers were not parties to the suit under discussion. So far

it appears, therefore, that any unpaid consumer has an action at law for the illegal overcharge. "There are limits even to the power of a court of equity; and in matters where the party has a remedy at law, it has no more power to set aside the statute (of limitations) than a court of law has." WOOD ON LIMITATIONS (Ed. 3), §§ 63, 58; *Walker v. Smith*, 16 Tenn. 238; *Peo. v. Mich. Central Ry. Co.*, 145 Mich. 140; *Carey-Lombard Lumber Co. v. Daugherty*, 125 Ill. App. 258. This proposition as supported by the cited cases rests upon the maxim that "equity follows the law." Although the statutes of limitations at first met with disfavor, now "they are found and approved in all systems of jurisprudence; * * * important public policy lies at their foundation." *Nichols v. Randall*, 136 Cal. 426, 432; *Wood v. Carpenter*, 101 U. S. 135, 139. They are construed liberally. *Lawson v. Tripp*, 34 Utah 28, 95 Pac. 520.

WILLS—CONSTRUCTION—REPUGNANT CLAUSES—In the first eight clauses of his will testator gave general and specific legacies to the amount of \$27,000. In the ninth clause he recited the execution of a deed to his son, reserving a life estate to himself and wife, and then gave his son his gold watch and all his diamonds. In the tenth and eleventh clauses he then gave all his real and personal property to his wife and provided that if she predeceased him the said property should pass to his son. The land conveyed to the son was testator's own land and it had a rental value of \$600 a month. No specific property is charged with the payment of the legacies given in the first eight clauses and no particular fund is pointed out for their satisfaction. *Held*, that the gift to the wife was of the property not disposed of under the previous portions of the will, as the word "residue," or some similar word, was inadvertently omitted from the clause containing the gift to the wife. *Bacon et al. v. Nichols et al.* (1909), — Colo. —, 105 Pac. 1082. (MUSSEY, J., not participating, GABBERT and CAMPBELL, JJ., dissenting.)

It would seem that the majority of the court, in their very commendable desire to give effect to the testator's intention, have overreached themselves and, as was pointed out in the dissenting opinion, have actually made a will for the testator instead of construing the one which he made. It is of course well settled that a court will look to the whole instrument to ascertain the testator's intention and will construe each part with relation to the language used in other parts, but it is the intention actually expressed in the will which controls. *Martindale v. Warner*, 15 Pa. St. 471; *Quincy v. Rogers*, 9 Cush. (Mass.) 291; *Elliot v. Topp*, 63 Miss. 138; *Couch v. Eastmen*, 29 W. Va. 784, 3 S. E. 23; *Sherrod v. Sherrod*, 38 Ala. 537; *Gilmore v. Jenkins*, 129 Ia. 686, 106 N. W. 193; 2 WOERNER, AM. LAW OF ADMINISTRATION, Ed. 2, § 414. Certainly, as was said in *Sherrod v. Sherrod*, supra, "the court cannot resort to conjecture when the terms of the will are of intelligible import. To do so would be to make a will conforming to what it is supposed the testator intended, not to search for the intention in the construction of what is said." By the great weight of authority, where an irreconcilable repugnancy exists between different clauses of a will the posterior clause prevails. 2 WOERNER, AM. LAW OF ADMINISTRATION, Ed. 2, § 415; 1 JARMAN, WILLS, *436; 1 RED-